FARAD CONTINUATION SHEET NO.:
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.9504 OF 2004

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.Nitin V. Gangal for petitioners.
Mr.K.R.Belose for respondent Nos.1A to 1E, 1G & 2, 4 & 5.

CORAM : H.L GOKHALE, J.

DATED : 9th January 2007

P.C. :

1. Heard the learned Counsel for the parties.

2. The petitioners herein have filed S.C. Suit No.6113 of 1986 in the City Civil Court at Mumbai. The Suit is filed against the respondents herein seeking a declaration that the petitioners are the owners of the suit property which is an ancestral property. The respondents herein have filed a Suit in the High Court bearing Suit No.1126 of 1986 seeking 1/10th share in the suit property. That Suit is a prior

Suit. The respondents moved a Notice of Motion in the City Civil Court bearing No.4238 of 2004 in petitioners' S.C. Suit No.6113 of 1986 that in view of the subject matter of the two Suits being common, the Suit filed in the City Civil Court be consolidated with the High Court Suit and be transferred to the High Court. By the order dated 28th October 2004 on that Notice of Motion the learned Judge of the City Civil Court granted that Motion. It is this order which is challenged in the present Petition.

3. Mr.Gangal appearing for the petitioners submits that the Judge of the City Civil Court could not have passed such an order. He relies upon Sections 22 and 23 of the Code of Civil Procedure.

4. Although there is good

merit in the submission of Mr.Gangal, it is also material to note that the respondents took out a Notice of Motion bearing No.1554 of 2005 in the Suit that they have filed in this Court for seeking transfer of the Suit pending in the City Civil Court to the High Court and to be heard along with the Suit pending in the High Court. That Motion No.1554 of 2005 has been subsequently granted by a learned Single Judge of this Court by his order dated 24th March 2006. The order records that nobody was present for the petitioners herein but Mr.Belose, learned Counsel appearing for the respondents, has pointed out that the Motion was served on the Attorneys who were appearing for the petitioners herein and shown the acknowledgement.

5. In view of what is stated above, although the order passed

by the learned Judge of the City Civil Court is an erroneous one, in view of the subsequent development of an appropriate order being passed by the High Court, no further order is required on this Petition. It is in view of the order passed by the High Court that the Suit which is filed in the City Civil Court will stand transferred to this Court and not by virtue of the order which is passed by the City Civil Court.

6. Petition stands disposed of.

(H.L.GOKHALE, J.)